

>>> Anne Smiley <smiley_aw@yahoo.com> 10/22/02 01:01PM >>>
TO: Michigan Supreme Court Clerk
FROM: Anne Smiley
Reference: File 2001-33-proposed amendments of rules
2.401 & 2.410

I wish to express my concerns over the changes proposed in rules 2.301 and 2.410 to include the phrase "to participate in good faith". This phrase will have very detrimental affects to the intent and outcome of mediation in a number of ways. Although people can be ordered to mediation, confidential9ialtiy protects them from having any o this information being used against them n court. If "good faith efforts" are invoked, it seems confidentiality in mediation will no longer be guaranteed. Secondly, it would seem to further exacerbate the conflict between parties instead of ameliorate it, having to now "prove" that either party is not acting in good faith. Where mediation allows for some very creative and powerful resolutions to conflict, this could be jaded by the threat of not acting in good faith to be used as a hammer in a court of law.

Although the intent may be well and good, the harmful effect could jeopardize the very reason why mediation can be so effective. The process works best when the parties are "free" to be honest without threat of what they say being used against them in the future. If the Supreme Court is really serious about promoting facilitative mediation in Michigan, it is best to let the process work without making it another tool to be used in an adversarial court proceeding.